

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (Boston)

No. 1:23-cv-10511-WGY
Vol. 2, Pages 83-162

UNITED STATES OF AMERICA, et al
Plaintiffs

vs.

JETBLUE AIRWAYS CORPORATION,
et al,
Defendants

For Bench Trial Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02110
Monday, November 20, 2023

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Official Court Reporter
United States District Court
One Courthouse Way, Boston, MA 02110

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I N D E X

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EXHIBITS

PAGE

[illegible]

1 (Proceedings, 11:17 a.m.)

2 THE CLERK: Court is back in session. You may be
3 seated.

4 MR. DUFFY: Your Honor, if I may, before
5 Mr. Culley begins, I passed to Ms. Gaudet a list of all the
6 exhibits by number and letter. We had conferred with
7 defendants before, our understanding was they would not
8 object to any of the 1006s that we tendered that were
9 discussed by Dr. Gowrisankaran through his examination. So
10 we apologize for not making that clear sooner.

11 THE COURT: Oh, so my division is of no moment.

12 MR. DUFFY: So we've already agreed that they
13 would be --

14 THE COURT: Is that right, Mr. Culley?

15 MR. CULLEY: That is right. And we totally defer
16 to the Court.

17 THE COURT: That's fine.

18 MR. DUFFY: Thank you, your Honor.

19 GAUTAM GOWRISANKARAN, (Resumed)

20 CROSS-EXAMINATION, (Cont'd.)

21 BY MR. CULLEY:

22 Q. Welcome back, Doctor. So just to summarize, before the
23 break we were talking about your newest market shares and
24 how they did not account for exits of either party?

25 MR. CULLEY: I'm sorry. Could we put that back

1 up, demonstrative C, the final page, please?

2 (On screen.)

3 Q. And how a number of these rows are impacted by the exit
4 of Spirit, the exit of JetBlue, entry or expansion by other
5 carriers, and routes with the divestiture endpoint; correct?

6 A. Yes, we were discussing that.

7 MR. CULLEY: We can take that down.

8 Q. Let's talk about entry a little bit more generally.
9 Your econometric analysis of net harm is actually based on
10 entry events; correct?

11 A. Yes.

12 Q. And those occurred over about two years, 2017, 2018,
13 and the first quarter of 2019?

14 A. Yes, exactly.

15 Q. And to identify those entry events, you relied on T100
16 data from the Department of Transportation; correct?

17 A. Yes, that's right.

18 Q. Okay.

19 MR. CULLEY: Let's show now Gowrisankaran
20 1006 Summary 2.

21 (On screen.)

22 Q. And this tallies, by carrier, all of the entries in the
23 T100 data during your time period, 2017, 2018, and the first
24 quarter of 2019, defined as four or more consecutive
25 quarters with at least weekly round-trip nonstop service by

1 a carrier, on average, following four or more consecutive
2 quarters with less than weekly round-trip nonstop service.

3 THE COURT: Mr. Culley, I rather like this big
4 list of slides, but now I have things in exhibits. I'm just
5 not with you. Direct me to where I should be looking.

6 MR. CULLEY: We're looking in the 1006 summary
7 folder.

8 THE COURT: Yes, fine.

9 MR. CULLEY: And this is Gowrisankaran
10 1006 Summary Number 2. I could also hand up another copy if
11 that would be easier.

12 THE COURT: No, that's all right. I should be
13 able to follow, and I believe I can. Well, why don't you
14 hand up a copy so I'm --

15 MR. CULLEY: Of course.

16 (Handing.)

17 THE COURT: Thank you very much.

18 MR. CULLEY: Of course, your Honor. And
19 defendants would move to admit Gowrisankaran
20 1006 Demonstrative 2 as Exhibit 803.

21 MR. BATTAGLIA: Your Honor, I think 845 will be
22 the new number.

23 MR. CULLEY: Oh, sorry. Yes, because we just
24 moved --

25 THE COURT: Right. And there's no objection?

1 MR. BATTAGLIA: No objection, your Honor.

2 THE COURT: Thank you. It's evidence, 845. Thank
3 you.

4 (Exhibit 845 received in evidence.)

5 Q. And, Doctor, as reflected on this summary, there were
6 597 entry events during the period that you measured;
7 correct?

8 A. Yes, that's right.

9 Q. And that's more than twice as many as the 264 routes on
10 which you calculated net harm; correct?

11 A. Yes, that's right.

12 MR. CULLEY: We could take that down.

13 Q. Let's talk about your GUPPI analysis. That was on your
14 presentation slide 33.

15 MR. CULLEY: Can you put that up on the screen?

16 (On screen.)

17 Q. Your GUPPI analysis, Doctor, is based on diversion
18 proportional to market shares; is that right?

19 A. Yes, that's right, within airlines, not for the
20 outside, just to be technically complete.

21 Q. And the market shares you used to calculate those
22 diversions were the market shares for the year ending
23 June 30th 2022; correct?

24 A. Yes, that's right.

25 Q. And if the market shares changed, then your GUPPI

1 calculations would change as well; right?

2 A. Yes, that's right.

3 MR. CULLEY: Let's go ahead and put up
4 Gowrisankaran Demonstrative H.

5 (On screen.)

6 MR. CULLEY: And if it would be easier, your
7 Honor, I could also hand up another copy of that too.

8 THE COURT: No, I'm with you now.

9 A. I'm sorry. Where can I find it?

10 Q. It's in the folder marked "Demonstratives."

11 A. Okay.

12 Q. I could also hand up a copy to you, Doctor, if you
13 like?

14 THE COURT: I believe this is it.

15 A. Maybe just a copy.

16 Q. Of course. Absolutely.

17 A. I see I. Oh, no, that's A.

18 Q. Here you go. You don't need to look for it.

19 (Handing.)

20 A. Thanks so much.

21 Q. Of course.

22 So this demonstrative overlays the same information
23 that we showed earlier for your market-share analysis on top
24 of the routes for which you calculated the GUPPIs which were
25 based on those market shares. So let's go ahead and add to

1 this demonstrative all of the factors that impacted the
2 market shares that we had before. So the Spirit exits,
3 partial exits, exits by JetBlue, entry or expansion by other
4 carriers, and routes with a divestiture endpoint. Okay.

5 And just as we saw earlier with your first set of
6 shares, only four routes are unmarked by one of these
7 factors; correct, Doctor?

8 A. Yes. It's the same set of routes, of course.

9 Q. And as we discussed before, your GUPPI analysis does
10 not account for divestitures; correct?

11 A. Yes, that's correct.

12 Q. Nor does it account for entry in response to the
13 merger; correct?

14 A. Well, it does -- as I said earlier, it's a point in
15 time. It looks at what the diversions are. But implicitly
16 when you do a GUPPI it's about the likelihood of raising --
17 it's about how competitors are likely to respond -- or,
18 excuse me, it's about how the firms that are merging are
19 likely to respond, and unilateral incentives.

20 Q. And not about the incentives of firms that are not
21 presently in the market; right?

22 A. That's fair, yeah.

23 MR. CULLEY: Okay. We can take that down.

24 Q. So those are the market shares that you calculated in
25 your markets. Let's back up and discuss your geographic

1 market definition itself.

2 So your analysis of the proposed relevant markets in
3 this case was guided by the hypothetical monopolist test;
4 correct?

5 A. In part, yes, as I -- it's also -- that was to rule out
6 markets that are too narrow.

7 Q. And you agree that a nationwide geographic market for
8 scheduled air passenger service would pass the hypothetical
9 monopolist test?

10 A. Yes. The test is meant to rule out markets that are
11 too narrow.

12 Q. And you agree it is technically possible to analyze the
13 effect of the JetBlue-Spirit transaction in a nationwide
14 market for scheduled air passenger service; right?

15 A. Yes.

16 Q. And you're not opining that we must always choose the
17 narrowest market that passes the hypothetical monopolist
18 test as the relevant antitrust market; right?

19 A. That's right.

20 Q. And choosing narrower or broader markets is akin to
21 zooming in or zooming out on the competition at issue;
22 right?

23 A. Yeah, in general it is. You want to choose a market
24 that's relevant for the options, that illuminates
25 competition.

1 Q. And the goal in selecting among candidate markets is to
2 make the market definition the one that helps focus the
3 exercise; right?

4 A. Yes, that illuminates the effects of competition, I
5 think, is what the guidelines say.

6 Q. Now, one of the points that you argued against
7 nationwide geographic market definition is that it would
8 include routes that are not substitutable from the consumer
9 perspective; right?

10 A. That's right.

11 Q. But you aggregate travel between two endpoints in
12 either direction; correct?

13 A. That's right.

14 Q. For example, you aggregate together a point from
15 Hartford to Miami with a flight from Miami to Hartford;
16 correct?

17 A. Absolutely.

18 Q. And, of course, a customer who's trying to travel from
19 Hartford to Miami couldn't get on a flight from Miami to
20 Hartford; right?

21 A. That's right. But the competitors are the same.

22 Q. And that's a sensible thing to do, as you just
23 mentioned, because in a situation where a firm's capacity
24 can be used in multiple relevant markets, the horizontal
25 merger guidelines allow you to aggregate those markets

1 together; correct?

2 A. That's not why I did it. It's because the competitors
3 from Miami to Hartford are the same from -- as the
4 competitors from Hartford to Miami.

5 Q. Okay. Well, let's take a look at your report, Doctor.

6 A. Uhm-hmm.

7 Q. Page 36 --

8 A. Which report?

9 Q. Your initial report. Paragraph 74.

10 (On screen.)

11 Q. And that's in the binder the government gave you,
12 just --

13 A. Yeah.

14 Q. And paragraph 74 discusses this --

15 A. I'm so sorry. I just need to get the binder out.

16 Q. Take your time, please.

17 A. No, that's not it. Oh, there it is. Yes.

18 Q. The last sentence of that paragraph -- first of all,
19 the paragraph -- scratch that.

20 That paragraph is discussing the very issue we just
21 talked about, Doctor, right? Aggregating travel in both
22 directions?

23 A. Yeah, let me get there. Is this page 36, is that what
24 you said?

25 Q. I believe so. Yeah, it's page 36.

1 A. Yes, that's right.

2 Q. In the last sentence there it says, "The merger
3 guidelines allow that in such situations where each firm's
4 capacity can be used in multiple relevant markets that the
5 description of said markets may be aggregated for the sake
6 of convenience." Right?

7 A. Right.

8 Q. That's what you wrote?

9 A. Yes.

10 Q. And that concept is called supply-side substitution;
11 correct?

12 A. I think that might be a word for it. I'm not sure if
13 it's in the guidelines or not.

14 Q. Okay. Well, let's take a look. So you cite in
15 footnote 131 here, the merger guidelines, footnote 8.
16 Right? You cited footnote 8, Doctor?

17 A. Yes, that's right.

18 Q. Let's go take a look at footnote 8 of the merger
19 guidelines. Those are in tab A of the binder that we gave
20 you. And on page 16 --

21 A. Uhm-hmm.

22 Q. -- section 5.1, footnote 8, it discusses supply-side
23 substitution; correct?

24 A. Yes, that's right. May I see where that's referring to
25 in the guidelines?

1 (Witness reviewed document.)

2 A. Yeah, that's in the section on rapid entrance.

3 Q. That's right. Thank you.

4 MR. CULLEY: And we can take that down.

5 Q. Let's talk about how you applied the hypothetical
6 monopolist test specifically to your city pair markets.

7 A. Uhm-hmm.

8 Q. You'd agree, Doctor, that passing the hypothetical
9 monopolist test is a necessary condition in defining market;
10 correct?

11 A. Yes, I would.

12 Q. A market that fails the hypothetical monopolist test is
13 too narrow?

14 A. That's right.

15 Q. To apply the hypothetical monopolist test to your
16 proposed geographic market of origin-destination city pairs,
17 you used something called a "Simple Critical Elasticity
18 Framework." Correct?

19 A. Yes, that's right.

20 Q. To level the set, when we talk about elasticity, we're
21 talking about demand elasticity?

22 A. Right. That's right.

23 Q. And demand elasticity measures how much a quantity
24 changes in response to a price change; is that right?

25 A. Yeah, it's basically right. It's the percent change in

1 quantity to the percent change in price, so the more elastic
2 the more substitutes consumers have.

3 Q. To, for example, an elasticity of 2, that would mean
4 that a price increase of 1 percent means a quantity decrease
5 of 2 percent; fair?

6 A. Yes, that's right.

7 Q. And sometimes economists put a negative number in front
8 of that and sometimes they don't?

9 A. Yes. I do both when I teach.

10 Q. And here the critical elasticity calculate, that is the
11 elasticity at which a 5 percent price increase for a
12 hypothetical monopolist would become unprofitable; correct?

13 A. Yes, that's right.

14 Q. And then the idea is you would compare the actual
15 demand elasticity against your critical demand elasticity?

16 A. That's right.

17 Q. Okay. The critical elasticity you calculate here is
18 1.82; correct?

19 A. I think I used a couple of different -- oh, sorry, the
20 critical elasticity, yes, that's right.

21 MR. CULLEY: And, your Honor, I realize we're
22 getting a bit technical, so to make it easier to follow the
23 numbers we've created Gowrisankaran Demonstrative D.

24 THE COURT: Thank you.

25 (On screen.)

1 THE COURT: I have it.

2 Q. And just to help the Court understand how this works,
3 Doctor, if the actual elasticity for a candidate market
4 were, say, 1.6, that would be below your critical value and
5 the candidate market would pass the hypothetical monopolist
6 test; correct?

7 A. Yes, that's right.

8 Q. And, by contrast, if the actual elasticity were, say,
9 1.9, that would be above your critical elasticity and it
10 would fail the hypothetical monopolist test because it's too
11 narrow; right?

12 A. Yes, that's right.

13 Q. Okay. So that's the critical elasticity. Let's talk
14 about the estimates of actual elasticity that you have.

15 You did not calculate your own estimates of actual
16 elasticities; correct?

17 A. Correct. I used numbers from the literature.

18 Q. In fact, you used two academic papers to get those
19 estimates; correct?

20 A. Yes, Berry and Jia, and Lee, et al.

21 Q. And both of those papers estimate an elasticity that is
22 an aggregate across many different routes; correct?

23 A. That's right. That's how estimation works. There's
24 only identification at a bigger level.

25 Q. None of those were for a particular origin and

1 destination pair; correct?

2 A. That's right. The estimates aggregate across routes.

3 Q. And you agree that there's going to be some variation
4 in demand elasticity across routes; right?

5 A. Sure.

6 Q. And that means some of the routes are going to have an
7 elasticity that is higher than the aggregate estimate;
8 correct?

9 A. Sure.

10 Q. For example, routes that have fewer business travelers
11 will tend to have more elastic demand; correct?

12 A. Yeah, that's -- that's possible, right. Yeah.

13 Q. That means their elasticity would be higher?

14 A. Yes, that's right.

15 Q. And the number of the airports that have been discussed
16 at this trial have a high share of leisure travelers;
17 correct?

18 A. I wouldn't assess that necessarily.

19 Q. For example, Orlando?

20 A. Orlando, sure, yeah. Uhm-hmm. Not necessarily, like,
21 New York or Miami or other ones.

22 Q. Fair enough, Doctor. And your report does not contain
23 any analysis of whether the sample of routes used in these
24 two papers are representative of the routes that JetBlue and
25 Spirit fly; correct?

1 A. No, they didn't report all their route sample.

2 Q. To make it more concrete, let's talk about some of the
3 specific markets that could be impacted. Do you recall
4 Mr. Friedman's testimony that Orlando International Airport
5 and Orlando Sanford Airport are perfectly substitutable?

6 A. I think so, yes.

7 Q. And you did not include Orlando International Airport
8 and Orlando Sanford Airport in the same geographic market?

9 A. I didn't. In my reply report I did investigate
10 robustness about Orlando Sanford and showed that it's very
11 small.

12 Q. And those are not the shares that you presented to the
13 Court; correct?

14 A. They're not. But, again, I showed robustness too
15 including Orlando Sanford.

16 Q. And do you recall Mr. Clark's testimony that Hartford's
17 and New Haven's airports compete with each other?

18 A. Yes, I do.

19 Q. And Mr. Yealy's testimony that Avelo considers New
20 Haven and Hartford to be very close to each other?

21 A. Sure. Yes, I do.

22 Q. And you did not include New Haven and Hartford in the
23 same geographic market, did you?

24 A. I didn't.

25 Q. And do you recall Mr. Wells' testimony that Punta Gorda

1 Airport and Fort Myers Airport compete with each other?

2 A. I don't remember specifically but it sounds right.

3 Q. Let's go ahead and take a look if you want. It's in
4 the trial transcript, November 15th, Volume 1, page 12,
5 lines 6 through 8.

6 MR. CULLEY: You can put that up on the screen.

7 (On screen.)

8 Q. Does this refresh your memory about Mr. Wells'
9 testimony?

10 A. Yes, it does.

11 Q. And do you recall Mr. Yealy's testimony that
12 Philadelphia, Pennsylvania and Wilmington, Delaware are
13 relatively close to each other?

14 A. Yes, I think so.

15 Q. And that Mr. Yealy looked at service from Philadelphia
16 to San Juan when considering whether Avelo should begin
17 service from Wilmington to San Juan?

18 A. Yes, I think I remember that.

19 Q. And you did not include Philadelphia and Wilmington in
20 the same market; right?

21 A. No, I didn't.

22 Q. So that's the issue of using an aggregate as opposed to
23 individual estimate. Let's talk about the actual estimate
24 itself. You cite an article by Berry and Jia that you
25 discussed earlier for one of your estimates; correct?

1 A. That's right.

2 Q. And you consider this article to be a reliable
3 authority; right?

4 A. Yes. It's a well-published article.

5 Q. In fact, you referred to it as one of the seminal
6 articles in economics; right?

7 A. Yes, it is, for the method -- and Berry, they're very
8 well-established economists, too.

9 Q. And your report used the value 1.67 that Berry and Jia
10 estimate in the aggregate for individual airport pairs;
11 correct?

12 A. Yes, that's their main estimate. And I used that even
13 though it's for airport pairs and not city pairs, because
14 demand at the airport-pair level will be more elastic than
15 demand at the city-pair level.

16 Q. Okay. Let's go ahead and put that on the
17 demonstrative.

18 (On screen.)

19 Q. As you just mentioned, your candidate markets are not
20 individual airport pairs; correct?

21 A. Right. They include city pairs when the Department of
22 Transportation defined them to be in the same city, like
23 Fort Lauderdale and Miami, for instance.

24 Q. And that's not what was estimated there, airport pairs;
25 correct?

1 A. Yes. Berry and Jia's main specification estimated
2 airport pairs, and then they had a robustness that estimated
3 city pairs that gave different results, and it's not what --
4 their main specification.

5 Q. Okay. Let's go ahead and cross that out then. And as
6 you mentioned, they did give an estimate for city pairs
7 which are your geographic market; correct?

8 A. Yes, but that's not their main specification.

9 Q. And that estimate was 2.01; right, Doctor?

10 A. Right, yes.

11 Q. And that is above your 1.82 critical elasticity;
12 correct?

13 A. Yes, it is.

14 Q. And if we use that estimate, it would fail the
15 hypothetical monopolist test; correct?

16 A. Sure, if you used just that estimate.

17 Q. Okay.

18 MR. CULLEY: You can take that -- actually, you
19 can leave --

20 Q. Let's also discuss the time frame of your elasticity
21 estimates. The most recent data for both of the academic
22 papers you relied on is from 2006; correct?

23 A. That's right.

24 Q. That's more than 15 years ago?

25 A. Right.

1 Q. And the Berry and Jia paper that you relied on, that
2 didn't just look at estimates from 2006, it also looked at
3 estimates from 1999; correct?

4 A. Yes, that's right.

5 Q. And it found that demand elasticity for both airport
6 pairs and city pairs had been increasing over time; correct?

7 A. Yes.

8 Q. And, in particular, they found that it had been 1.55 in
9 1999 for airport pairs, and 1.68 in 1999 for city pairs;
10 correct?

11 A. Yes, that's right.

12 Q. So it had gone up for both of those?

13 A. Yes.

14 Q. And your report does not include any analysis of
15 whether the elasticity estimates you rely on increased any
16 further since 2006; correct?

17 A. No, nor have they decreased, as might be likely too.

18 Q. You don't know what happened to them, correct, one way
19 or the other?

20 A. Yeah, so the -- as an economist, and this is what I
21 teach my students about elasticity, is we tend to use
22 elasticities because they don't change that much over time.
23 They're very comparable. That's the point of using
24 elasticities. So I don't know exactly what happened to
25 them, but they're probably fairly similar now.

1 Q. And you didn't do any analysis to establish that;
2 correct?

3 A. That's not exactly fair, no. I mean, I looked at the
4 competitors now. I looked at -- I also looked at what
5 courts have ruled on markets more recently. And they, in
6 this very courthouse, in the Northeast Alliance, they found
7 that city pairs or, I think, something even slightly
8 smaller, were relevant markets. So I did a bunch of
9 analyses to verify that this was accurate.

10 Q. Let's look at some other elasticity estimates. You
11 heard testimony from Mr. Friedman that he estimated
12 elasticities for individual routes in the process of
13 creating JetBlue's combined network plan; right?

14 A. I think I did but I don't remember exactly what I
15 heard.

16 Q. Let's take a look at it.

17 MR. CULLEY: Let's bring up Exhibit 153. And if
18 you flip over to tab "Source File Final," Mr. McLeod. Here
19 we go.

20 (On screen.)

21 Q. And you can see the underlying source data there,
22 Doctor?

23 A. Yes, I can. Is there something you have on this in --

24 Q. No, but we created a demonstrative to pull out the
25 relevant items for you. It's Gowrisankaran Demonstrative E.

1 A. E, as in Edward?

2 Q. Correct.

3 And each of these estimates is greater than 1.82;
4 correct?

5 A. It is, but I don't know how he got them. And,
6 actually, you know, when I looked at the record in depth,
7 like Mr. Clark testified about the ULCC test --

8 Q. So, Doctor, I just asked you, these are greater than
9 1.82?

10 A. They are. I just don't know how reliable they are,
11 though.

12 Q. Let's go back to that, please. So, I'm sorry, let me
13 just understand that a little bit better. You don't
14 understand how reliable these estimates are? That's what
15 you said?

16 A. Yes, that's right.

17 Q. Okay. And you're saying you would need to examine this
18 underlying document further in order to assess the
19 reliability?

20 A. No, I'd need to understand the variation in the data
21 that created it. So what you want to do to create a
22 elasticity is you want to move prices around and see how
23 consumers respond. And the closest I saw to that is, like,
24 the ULCC test, but they didn't vary them exogenously so they
25 didn't create what we call natural experiments. So I don't

1 know that JetBlue has very reliable information on
2 elasticities.

3 Q. Okay. And you'd want to investigate that before you
4 relied on it?

5 A. Yeah. I mean, in general, I would rather rely, for an
6 elasticity estimate, on -- that's the thing that's very much
7 in the wheelhouse of economists rather than firms. And I
8 want to rely on studies that are peer-reviewed or that, you
9 know, where I can say that this is variation that makes
10 sense to use.

11 Q. Fair enough, Doctor.

12 MR. CULLEY: Okay. Let's take that down.

13 Q. Let's switch gears and talk about coordinated effects.
14 And let's bring up slide 53 from your direct testimony
15 presentation.

16 (On screen.)

17 Q. At the bottom here you cite the 1994 ATPCO Consent
18 Decree as evidence of past coordination; correct?

19 A. That's right.

20 Q. That case was filed six years before JetBlue was
21 founded; isn't that right?

22 A. That's right.

23 Q. And the settlement you mentioned here with American
24 Airlines, that did not mention JetBlue at all; correct?

25 A. It did not, no.

1 MR. CULLEY: You could take that down.

2 Q. Let's talk about some of the points that you made about
3 Spirit. On slide 9 of your direct testimony you identified
4 Spirit as having the most growth of major U.S. airlines
5 measured by available seat miles; correct?

6 A. Yes, over the 13-year period. Over quite a long
7 horizon.

8 Q. And in this graph on the bottom that you just
9 referenced you took that from a presentation from Airlines
10 for America; correct?

11 A. Yes, that's right.

12 Q. And before you showed that to the Court you examined
13 that presentation; right?

14 A. Yes. But I took it from -- it wasn't analysis I did to
15 create this.

16 Q. And you determined it was reliable before you showed it
17 to the Court; right?

18 A. Yes.

19 Q. Okay. Let's go ahead and put the underlying document,
20 which is Exhibit BYH, up on screen.

21 (On screen.)

22 Q. And that's tab 1 at the very end of the binder that we
23 gave you. This is the document; right, Doctor?

24 A. It looks right.

25 Q. And the graph that you relied on, that's on slide 23?

1 A. I don't remember.

2 Q. Can you see it there?

3 A. Oh, slide 23. Yes, it is.

4 Q. Let's go three slides back to slide 20. Now, slide 20
5 of this presentation on which you relied states, "The number
6 of competitors per domestic trip rose from 3.33 to 3.47."

7 Do you see that?

8 A. Yes, I do.

9 Q. From the period 2000 to 2022?

10 A. Yes, I do. Uhm-hmm.

11 Q. And then right below that it says, "Made possible by,
12 one, lack of entry barriers allowing rapid nationwide
13 expansion of lower-cost carriers; and two, mergers of
14 complementary networks enabling large network carriers to
15 offer competitive connecting service on more city pairs and
16 new nonstop service into markets they previously did not
17 serve." I read that correctly; right, sir?

18 A. Yes.

19 MR. CULLEY: We would move to enter BYH into
20 evidence as 846, your Honor.

21 THE COURT: BYH?

22 MR. BATTAGLIA: Your Honor, objection. This is
23 untimely.

24 MR. CULLEY: Your Honor --

25 THE COURT: I don't understand the objection.

1 What do you mean untimely?

2 MR. BATTAGLIA: This was not provided to us.

3 MR. CULLEY: We did provide it to them over the
4 weekend after we saw the document in Dr. Gowrisankaran's
5 slides.

6 THE COURT: You've seen that document for some
7 time.

8 MR. CULLEY: His slides, sir? We only received
9 his slides on Thursday.

10 THE COURT: Oh, really?

11 MR. BATTAGLIA: No, the slides were provided three
12 days before he took the stand.

13 THE COURT: That's Thursday.

14 MR. BATTAGLIA: Tuesday.

15 THE COURT: Well, you're asking that this be
16 admitted in evidence?

17 MR. CULLEY: Yes, your Honor, under Rule 703 as
18 a -- as the doctor relied on it.

19 THE COURT: You did rely on it?

20 THE WITNESS: I relied not on this, but I just
21 reproduced one of the figures, yes.

22 THE COURT: And which figure is it?

23 MR. CULLEY: He relied on slide 23 --

24 THE COURT: No, no, I'm asking him.

25 MR. CULLEY: I'm sorry.

1 THE WITNESS: Yes, it is this figure that I
2 relied. I put that in my original report which was filed in
3 July.

4 THE COURT: This one which says, "Change
5 percentage to systemwide scheduled ASMs"?

6 THE WITNESS: No -- sorry. May I see? It's the
7 one that says -- it says, yeah, "Change percent in
8 systemwide scheduled ASMs." That's right.

9 THE COURT: I'll admit that.

10 MR. BATTAGLIA: We'll allow the slide to be
11 admitted.

12 MR. CULLEY: We're asking for the whole document
13 to be admitted.

14 MR. BATTAGLIA: We object as to the whole
15 document.

16 THE COURT: No, I'll allow the slide to be
17 admitted and it will be, what, Exhibit 846.

18 (Exhibit 846 received in evidence.)

19 MR. CULLEY: Okay.

20 Q. Let's go back to your presentation, Doctor. And we
21 were on slide 9 of your presentation. Let's keep that up,
22 and we will put up Gowrisankaran 1006 Summary 6 next to it.

23 (On screen.)

24 Q. That's in your folder with the 1006 summaries, Doctor.

25 A. I got it.

1 MR. CULLEY: Have you been able to locate it, your
2 Honor?

3 THE COURT: I have. Thank you.

4 Q. So you looked, as you mentioned, Doctor, over the
5 13-year period from 2010 to 2023, at the growth in available
6 seat miles; correct?

7 A. That's right.

8 Q. And that's 13 years?

9 A. That's right.

10 Q. And the figures in your graph are cumulative figures
11 over the entire period, they're not annual numbers?

12 A. Correct.

13 Q. Okay. So in 1006 Summary 6 we took the same underlying
14 public schedule data and we restricted it to 2021 to 2023.

15 MR. CULLEY: And, your Honor, we would move to
16 admit Gowrisankaran 1006 Summary 6 as 847.

17 THE COURT: No objection?

18 MR. BATTAGLIA: No objection, your Honor.

19 THE COURT: It may be admitted, 847.

20 (Exhibit 847 received in evidence.)

21 Q. And, Doctor, your slides reported that Spirit had the
22 most growth of all the airlines, but if we look over here
23 from 2021 to 2023 in this more restricted period, Spirit
24 actually has the seventh highest growth of all airlines;
25 correct?

1 A. That's not quite right for two reasons. The first is I
2 restricted it to the most growth of any major airline. And
3 the second is two of the airlines that you put there, Avelo
4 and Breeze, simply didn't exist at the start of this sample.
5 And so that's not even defined what their growth rate is.

6 Q. So if you look at the footnote, Doctor, we looked at
7 them against the base year of 2022 to account just for the
8 issue that you mentioned.

9 A. Right. But according to your question, you said they
10 had the seventh highest growth rate from 2021 to '23. And
11 two of those airlines weren't even there in 2021.

12 Q. So over the period that you're talking about, the two
13 airlines that did not even exist entered the market; is that
14 right?

15 A. They did. They're pretty small still.

16 Q. And if we also look at ULCCs, Frontier had larger
17 growth over this period, 2021 to 2023, than Spirit did;
18 correct?

19 A. Yes, it did.

20 Q. As did Delta, Hawaiian and United?

21 A. Yes. During this recovery from COVID period, those all
22 had higher growth rates.

23 MR. CULLEY: We can take that down.

24 Q. On slide 10 of your presentation you presented an
25 analysis of Spirit's fares versus other airline fares in the

1 nonstop overlap markets; correct?

2 A. Yes, that's right.

3 Q. These fares are averages; right?

4 A. Yes. These are average stage length adjusted prices.

5 Q. And you didn't restrict the fares in these averages to
6 fares most comparable to Spirit's offering, basic economy
7 and Blue Basic? You did not do that; correct?

8 A. No, I did not, but I did include amenities on the right
9 column to account for that.

10 Q. Thank you, Doctor. So the JetBlue line here on the
11 left, for example, that says 186, that would include tickets
12 for Mint, JetBlue's business-class product; correct?

13 A. I don't think that's right because I don't think
14 JetBlue offers Mint on any routes it competes overlap with
15 Spirit. So I don't think there would be any Mint fares in
16 there.

17 Q. Fair enough. It would include Blue Extra there --

18 A. Yes, it would. Sorry to interrupt. Yeah, it would.

19 Q. And on the graph on your right there's a little
20 asterisk next to F9. Do you see that?

21 A. Yes, I do.

22 Q. And that's Frontier?

23 A. That's right.

24 Q. And the explanation for that is that all the lines on
25 your right side exclude taxes except for Frontier; correct?

1 A. Yes. My team wasn't able to exclude taxes for Frontier
2 because of how they produce the data.

3 Q. And not excluding taxes would make the Frontier number
4 larger than it really is; correct?

5 A. Right, relative -- it would make it not an
6 apples-to-apples comparison, which is why I put a star
7 there.

8 Q. To circle back to the same issue on your graph on the
9 left, for example, for United Airlines that would include
10 first class tickets on those routes for United; correct?

11 A. Sure, yeah.

12 Q. As it would for AA?

13 A. Yes.

14 Q. And for Delta?

15 A. Yes.

16 Q. Let's go to slide 55 of the presentation that you gave
17 on direct.

18 (On screen.)

19 Q. You state at the top here that, "Spirit fares are less
20 transparent to other airlines, whereas JetBlue must make
21 nearly all fares available through ATPCO." That's what you
22 wrote, sir?

23 A. Yes, that's right.

24 Q. And you heard Mr. Klein's testimony that it is not any
25 harder or more complicated to scrape fares from Spirit's

1 website than it is to get them from ATPCO; did you not?

2 A. Mr. Clark, you said, right?

3 Q. Mr. Klein.

4 A. Oh, Mr. Klein. Yes, I did hear -- I thought -- okay,
5 yeah, I heard the testimony of that. Right.

6 MR. CULLEY: You can take that down.

7 Q. One of the reasons you gave to support your
8 coordinated-effects opinion in your direct testimony was
9 that JetBlue will become more like a legacy as a result of
10 the merger because it will be bigger on many of the routes
11 that it operates and more like a hub-and-spoke carrier;
12 correct?

13 A. Yes, that's right.

14 Q. But your opinion is also that if JetBlue grows
15 organically, meaning without the merger, and has more
16 connecting routes and more breadth nationally, that JetBlue
17 will be more likely to engage in coordination over time;
18 correct?

19 A. Sure, that's definitely possible. It depends how it
20 grows.

21 Q. And is it your opinion that JetBlue will no longer be a
22 maverick after the merger?

23 A. That's not how I think about it as an economist. How I
24 think about it as an economist is however much JetBlue is a
25 disruptive force now, they'll have incentives to be less of

1 a disruptive force after the merger if it were to go
2 forward.

3 Q. And did you hear Mr. Hayes' testimony that after the
4 merger nothing about JetBlue's maverick status would change?

5 A. Yes, I did.

6 Q. And did you also hear him say that JetBlue could never
7 become a legacy airline because the reality is that JetBlue
8 and Spirit together is a small part of the market?

9 A. Yes, I heard him say that.

10 Q. And is your opinion that one reason for JetBlue
11 becoming more like a legacy is that it will have more
12 connecting traffic?

13 A. I said it will have more incentives to act like a
14 legacy carrier. But, yes, one reason I said is that it
15 would have more potential for connecting traffic.

16 Q. And did you hear Mr. Friedman's testimony that JetBlue
17 will go from only 85 percent nonstop to 80 percent nonstop
18 service as a result of the transaction?

19 A. I wasn't here for Mr. Friedman's testimony, but I read
20 the transcript, so...

21 Q. Did you read that part of the testimony?

22 A. I think so, yes.

23 Q. And did you also hear him say that that 80 percent
24 nonstop is similar to Spirit's share of nonstop traffic
25 today?

1 A. Yes, I did. I didn't hear him say that, I'm sorry. I
2 wasn't here.

3 Q. You read him say that?

4 A. Yes.

5 Q. One of the things you cited in your direct testimony to
6 support your coordination theory was the existence of
7 airline cross-market initiatives; correct?

8 A. Yes, that's right.

9 Q. But you did not do any systematic study of the
10 frequency of cross-market initiatives; right?

11 A. No. It's not really necessary to understand. Just the
12 fact --

13 Q. I'm sorry, Doctor. I just asked whether you did or
14 not?

15 A. Oh, no, I didn't. Yeah.

16 Q. And you did not do any -- you also referred to
17 flashing; correct?

18 A. I did, and other types of signaling, yes.

19 Q. And you did not do any systematic study of the
20 frequency of flashing; right?

21 A. No, I didn't.

22 Q. And you heard Mr. Lage testify that he recalls only one
23 instance where he observed JetBlue file what he thought
24 might be a cross-market initiative; right?

25 A. Yes, that's right.

1 Q. And you also heard him testify that it turned out that
2 fare action was not actually a cross-market initiative;
3 right?

4 A. Yeah, I think he said something like that.

5 Q. And for any of the alleged cross-market initiatives
6 that were discussed at trial, you didn't go back and check
7 whether they were actually cross-market initiatives; right?

8 A. No. It wasn't necessary.

9 Q. And you heard Mr. Hillyard testify that JetBlue alone
10 files 5- to 10 million fares on a yearly basis; right?

11 A. Yes, I did.

12 Q. Another reason you note in support of your coordination
13 opinion is that JetBlue prices similar to the legacies;
14 correct? I might have mangled that. Let me enunciate a
15 little bit more.

16 Another reason you note, in support of your
17 coordination opinion, is that JetBlue prices similarly to
18 the legacies; correct?

19 A. I might have said something like that, but I don't want
20 to -- you know, like, there's two parts to this. It doesn't
21 offer an unbundled model, like Spirit, so it -- so its
22 pricing, the way it prices is more similar to legacies with
23 a bundled model. I might have said -- I certainly said in
24 other parts of my report that it's more often similar in
25 pricing to legacies than Spirit is.

1 Q. Let's go ahead and take a look at slide 56 of your
2 presentation.

3 (On screen.)

4 Q. And this is what I was referring to; right, Doctor?

5 A. Right. This is where I said that it's --

6 Q. You don't need to repeat your testimony.

7 A. No, that's fine.

8 Q. And this graphic was based on the Spirit 037 AP
9 reports; correct?

10 A. That's right.

11 Q. And you heard Mr. Lage testify earlier that he's the
12 person who prepares the Spirit 037 AP reports; correct?

13 A. Yes. I think he no longer does, actually.

14 Q. And you heard him testify that these reports reflected
15 only the lowest filed fare on each route; correct?

16 A. Absolutely.

17 Q. And not the fares that were actually sold on these
18 routes?

19 A. Not necessarily what was sold, the lowest filed fares.

20 Q. Or even if they were available; correct?

21 A. Right.

22 Q. Because the 037 AP reports do not report nor could they
23 report how many seats were actually available for purchase
24 at each of these fare levels; correct?

25 A. Correct.

1 Q. Because that data is not public; right?

2 A. Those data are not public -- I mean, well, ATPCO isn't
3 public either, but they're not available on ATPCO. Prices
4 are available.

5 Q. And not the inventory available at the price? That's
6 not available on ATPCO; correct?

7 A. Correct.

8 Q. And you also heard Mr. Lage testify that the reports do
9 not control for restrictions that may be placed on the fares
10 that limit their availability to particular customers;
11 correct?

12 A. That's right.

13 Q. And as you mentioned before, Mr. Lage actually stopped
14 using these reports; correct?

15 A. Yes. He said he stopped reporting them.

16 Q. And you had access to the DB1B from the Department of
17 Transportation for tickets actually sold; correct?

18 A. That's right.

19 Q. And you could have showed an analysis by type of fare
20 using that data, but that is not what you chose to show to
21 the Court; correct?

22 A. No, that's not right. So I did show analyses that
23 Spirit's fares are lower and that JetBlue's fares are very
24 similar to the legacy carriers. I can point that to you.
25 It's a slide in my testimony.

1 Q. You did not show a breakdown by different type of fare
2 bucket?

3 A. Well, the problem is, is that it's hard to interpret
4 those fare buckets. So I don't know if it's an
5 apples-to-apples comparison. These are more interpretable
6 because they show what fares are filed with walk-up fares.
7 So I wouldn't know from DB1B if those are walk-up fares or
8 what other types of fares. But if you look at that it's
9 very consistent here. The JetBlue fares are very similar to
10 legacies and Spirit fares are a lot lower. So I already did
11 show that in some sense.

12 Q. You're not familiar with the exact methodology that
13 Mr. Lage used to identify the prices or the routes within
14 the 037 AP reports; correct?

15 A. I identified the routes because these are nonstop
16 overlap markets. And so he did it by across routes and
17 reported it in a spreadsheet. And I took those spreadsheets
18 and I calculated it by route, or my team did, I should say.
19 So I am aware of that.

20 I'm not specifically aware of about what he did, but my
21 understanding is he just went -- you know, he did this like
22 roughly every other day for 2022, is when I'm taking the
23 data. And my understanding is he just went to ATPCO and
24 looked at the lowest available fare without any
25 restrictions, that's the walk-up fare, or the 3-day, or the

1 7-day, and then looked at that for the big four and JetBlue,
2 and he looked at Spirit's own internal systems to find their
3 lowest available fare.

4 Q. You don't know the exact methodology he used; correct,
5 Doctor?

6 A. I mean, I don't know the specifics but that's pretty
7 close to the exact methodology.

8 Q. Okay. Let's take a look at your deposition, page 87
9 line 5 through page 88 line 9.

10 A. The deposition is here in --

11 Q. That's right. It's in the binder, the first tab in the
12 binder we gave you.

13 A. Now, what were the page numbers again?

14 Q. It was page 87 line 5 through page 88 line 9.

15 (On screen.)

16 Q. Just to orient you, you and I at that point were
17 discussing the bottom part of your graph all the way on the
18 left about the 20.5 percent. So I had asked you, "It is not
19 what Spirit -- about what Spirit observes. But is it your
20 conclusion that 25 percent of the time, JetBlue -- only 25
21 percent of the time is JetBlue pricing below the big four on
22 zero-day advance purchase tickets. Is that your conclusion,
23 sir?"

24 You answered, "So that's not my -- that's not my
25 conclusion that JetBlue is pricing below the legacies

1 20.5 percent of the time because this is a particular sample
2 that Mr. Lage at Spirit took. It's my conclusion that
3 Spirit observes that JetBlue is similar to legacy airlines.
4 And I would see that based on their ticket sales at
5 zero-advance purchase, 3-day advance purchase or 7-day
6 advance purchase that they are, in fact, similar to legacy
7 sales. I don't know the exact methodology that Mr. Lage
8 used to identify the prices or routes. And this is about a
9 very particular time period. So I'm not assessing overall
10 whether JetBlue fares are lower than legacy fares
11 20.5 percent of the time or lower than the big four fares."

12 Correct?

13 A. Yes.

14 MR. CULLEY: Okay. You can take that down.

15 Q. Let's go back to slide 56.

16 (On screen.)

17 Q. Now, in your legend here you group the big four; is
18 that right?

19 A. That's right.

20 Q. And the big four in your graph include Southwest;
21 correct?

22 A. That's right.

23 Q. And Southwest is a low-cost carrier; right?

24 A. Yes, it is.

25 Q. And in your report you did not provide -- you did not

1 prepare an alternative version of this analysis that broke
2 out Southwest; correct?

3 A. I did not, no.

4 MR. CULLEY: Okay. We can take that down.

5 Q. Let's talk about your opinions on cost-conscious
6 customers. You do agree that legacy airlines compete for
7 cost-conscious travelers by offering tickets in basic
8 economy that are designed to compete with the offerings of
9 LCCs and ULCCs; correct?

10 A. Yes, I do.

11 Q. You don't define a separate market for cost-conscious
12 consumers; correct?

13 A. That's correct.

14 Q. You agree there's no firm objective boundary between
15 cost-conscious consumers and other consumers; correct?

16 A. That's right. I'm not here to offer an opinion that
17 there's a firm boundary, rather it's a continuum.

18 Q. In fact, the same customer could be cost-conscious for
19 some flights but not for others; correct?

20 A. Sure. I think I gave an example of somebody who's
21 traveling for vacation might be more cost-conscious than if
22 she's traveling for a business trip paid by her employer.

23 Q. And a customer could be cost-conscious for some flights
24 in their personal life but not cost-conscious for other
25 flights in their personal life, as well, not just their

1 business travel; correct?

2 A. Sure. If they're going to a funeral for a parent or
3 something they're not going to be cost-conscious.

4 Q. And you didn't calculate market shares among airlines
5 for cost-conscious consumers; right?

6 A. No. I didn't define of them as markets, to start with.

7 Q. And you agree that cost-conscious travelers have more
8 price elastic demand than passengers as a whole; right?

9 A. Yes, I would.

10 Q. And you would agree that cost-conscious travelers may
11 be willing to travel further to an airport than business
12 travelers for scheduled air passenger service; correct?

13 A. Yes, that's right.

14 Q. In applying the hypothetical monopolist test, you
15 didn't separately analyze the demand elasticity of
16 cost-conscious travelers; right?

17 A. I didn't. I didn't even define a market that way.

18 Q. Let's talk about your estimates of harm. I think you
19 started to explain this around slide 63 of your
20 presentation.

21 MR. CULLEY: If we could bring it up on screen.

22 (On screen.)

23 Q. And on this slide you were explaining to the Court how
24 your -- how you estimated the effect of Spirit's entry on
25 prices; is that right?

1 A. Yes, that's right. I don't think this was -- this was
2 my first slide in net harm, so I think I have some earlier
3 slides where I estimated the impact of Spirit's entry on
4 market prices before this. I don't think it's the first
5 one.

6 Q. But this slide is illustrating the estimation that you
7 did; correct?

8 A. That's right.

9 Q. The shape of your price change prediction here, that's
10 called a parabola; right?

11 A. Yes, that's right.

12 Q. And, at first, if we go down the yellow line -- well,
13 let me first ask, the bottom, your X-axis here, that's
14 relative capacity; correct?

15 A. Could you repeat the question, please?

16 Q. The bottom of the graph here, the X-axis, that's
17 relative capacity; correct?

18 A. Yes.

19 Q. And that means roughly how much capacity Spirit entered
20 with compared to how much capacity was already in a market;
21 correct?

22 A. Roughly, yeah. It's number of passengers in the
23 market.

24 Q. And as Spirit adds more capacity, you testified, we see
25 a larger impact on the price charged in that market;

1 correct?

2 A. Yes, for almost all of the sample.

3 Q. But around 0.03 here your estimation stops going down;
4 correct?

5 A. Yes, that's right.

6 Q. And it starts going up?

7 A. Yes. I would say the regression line starts going up.

8 Q. Fair enough. And so entry with 0.015 relative capacity
9 and entry with, say, 0.04, they basically have the same
10 impact on prices?

11 A. Yes. There's almost no entry with 0.04.

12 Q. Even though entry at 0.04 is more capacity than
13 at 0.015?

14 A. Yeah. Not only is that out of sample, but it kind of
15 makes sense that it would start going up after a while.
16 Because if you enter with a huge amount of capacity, there's
17 only one route there, you're basically the only airline
18 serving that route. And so you're not disciplining prices
19 because you might be a monopoly on that route. So that's
20 only one route, of course, that that happens for.

21 Q. And -- okay. Let's continue with that line of thought.
22 So around, say, 0.058 your regression line actually predicts
23 that prices would go up if you entered by flooding the
24 market with capacity; right?

25 A. Yeah. I mean, that's -- I mean, it would predict that

1 but it's not something I would want to use, as an economist.
2 So as I testified to, as an economist what we want to do is
3 use regressions, use predictions in sample. And so how
4 lines predict out of sample, that's not really probative of
5 anything.

6 Q. So the way that you handled this prediction was you
7 just didn't use any part of the line after a particular
8 capacity?

9 A. Yes, basically. But just to be accurate what I did is
10 I think I dropped two entry events that were bigger than my
11 biggest -- two events where Spirit was there and they were
12 essentially the only airline that was bigger than my biggest
13 entry event.

14 Q. So you had data that was out that far and you just
15 excluded it; correct?

16 A. No, that's not exactly right. So I didn't exclude any
17 data from the regression. Where I excluded data from was
18 from the prediction. So remember that what I said is
19 there's two steps to my -- to my net-harm calculation.
20 First, I estimate this parabola or this line, as you --
21 parabola, as you called it accurately. And then what I did
22 is I used it to predict the yellow arrows that say for every
23 route where Spirit is there, how much would be the price
24 impact if Spirit were removed, and then the blue arrows.

25 So what I did was that, to be conservative, I did not

1 include Spirit markets where they're present, they're
2 outside of the sample of entry. Because entry is where I
3 have identification in the data. I apologize if that's
4 long, but ask me if --

5 Q. Thank you for the clarification.

6 A. Okay.

7 MR. CULLEY: We can take that down.

8 Q. So your net-harm analysis calculates harm on routes
9 where Spirit but not JetBlue is operating today; right?

10 A. In part it does, yes.

11 Q. And as we discussed earlier, on those routes where only
12 Spirit is present but not JetBlue, the companies don't
13 compete; correct?

14 A. That's right.

15 Q. But you still calculate harm on the merger from these
16 routes because your opinion is that harm from the merger --
17 sorry, let me -- the places where there is harm from the
18 merger are decoupled from the places where the merger
19 creates any competitive incentives; correct?

20 A. Yes. And just to be clear, I estimate both harm and
21 net harm there.

22 Q. Okay. But just to clarify, Doctor, you're estimating
23 harm on these nonoverlap routes?

24 A. Yes, that's right.

25 Q. Because they're -- the places where harm is felt are

1 decoupled from the places where incentives are created; is
2 that right?

3 A. Yes. I think I already answered that.

4 Q. Okay. Let's take a look at some examples of your
5 net-harm results. So I wanted to take a look at one of the
6 examples that you gave, slide 74 on your presentation.

7 (On screen.)

8 Q. So here you were looking at the Las Vegas-to-San
9 Francisco route; correct?

10 A. That's right.

11 Q. And the box here says, "Market Facts." Is that right?

12 A. Yes, it does.

13 Q. Okay. And then in a few slides from here you predict a
14 net 9 percent increase in price on this route; right?

15 A. Yes, I did.

16 Q. So let's talk about some of the other market facts
17 about this route. How many nonstop carriers are there on
18 this route?

19 A. There's a lot. JetBlue's not nonstop, but I think
20 Delta, United, American, and Frontier maybe, Southwest. I
21 think there are five others, at least, I remember.

22 Q. And how many ULCCs are on this route?

23 A. I think Frontier and Allegiant may both be on it, but I
24 can't remember for sure.

25 Q. And is Spirit the largest ULCC on this route?

1 A. I'm not sure.

2 Q. Okay. Let's take a look at Gowrisankaran 1006 Summary

3 3. That should be in that folder of 1006 summaries that you
4 have there, Doctor.

5 (On screen.)

6 MR. CULLEY: Were you able to find that one, your
7 Honor?

8 THE COURT: I do.

9 Q. Okay. And I think you mentioned there were five rivals
10 on that route. We have six listed here. But of course
11 American is quite small so --

12 A. Yeah. I think I listed Delta, maybe, and it's not
13 there too.

14 Q. So this displays your net-harm estimates for San
15 Francisco to Las Vegas and also for Chicago to Phoenix, and
16 it does that using the information you provided in your
17 appendices with the shares of each airline offering nonstop
18 route based on the same data and time frame used to
19 calculate the shares for your concentration analysis.

20 MR. CULLEY: And at this point, your Honor, we
21 would move to admit 1006 Summary 3 as Exhibit 848.

22 THE COURT: No objection?

23 MR. BATTAGLIA: No objection, your Honor.

24 THE COURT: 3 is admitted, Exhibit 848.

25 (Exhibit 848 received in evidence.)

1 Q. Doctor, so, again, your unweighted price prediction for
2 this route was that prices would go up by 9.4 percent;
3 correct?

4 A. That's correct.

5 Q. And so is it still your view that after this merger
6 prices will go up by 9.4 percent on this route with six
7 other competitors where Spirit has only a 7.3.8 percent
8 share, JetBlue has only a 0.04 percent share, and Spirit is
9 not even the largest ULCC?

10 A. So, basically, yes. But let me just put two caveats to
11 that, which is JetBlue's share is not even counted here
12 because it's not a nonstop overlap. Then also, you know,
13 what I think -- the way you want to think of an economic
14 model is if you're looking at it nationally, you have pretty
15 good degrees of significance. That's what confidence
16 intervals are for, for instance. But if you're looking at
17 it in any one route you're going to be less sure about what
18 the harm is. But remember that what I did is I looked
19 overall at cross routes and looked at the average.

20 So the points that you saw, like the yellow dots, they
21 don't track the yellow line exactly. Right? Some points
22 are a little bit above the line and some are a little bit
23 below the line. And that's natural in economics, that every
24 line, the impact might vary. So I wouldn't assess the same
25 degree of certainty for one particular route as I would

1 overall to harm. Because the point of regression is it
2 averages across those routes and comes up with an average
3 number that where we have a lot more certainty than on any
4 individual route or market.

5 Q. Thanks for that clarification, Doctor.

6 Just to pick up on one thing that you said, you
7 mentioned JetBlue's connecting service here. So you would
8 agree that for both of these routes what you're measuring
9 with your regression is not the loss of head-to-head
10 competition, but simply the effect from substituting Spirit
11 planes for JetBlue planes; correct?

12 A. In these two routes, because they are not nonstop
13 overlaps, that's accurate, yes.

14 Q. Now, as we discussed earlier, the parties have exited
15 or will exit some of the nonstop presumption routes;
16 correct?

17 A. Yes, that's right.

18 Q. But you are still including the presumption routes that
19 the parties have exited since the first half of 2022 in your
20 econometric calculation of harm; right?

21 A. Yes. I took one point in time. I took the most recent
22 point in time that's unaffected by incentives of the merger,
23 and so I also document that there will be some entry. But
24 we can't look at shares going forward or look at prices
25 going forward since we don't know what shares would be for

1 2024.

2 Q. Let's take a look at Gowrisankaran Demonstrative F and
3 let me know once you've located that, Doctor.

4 (On screen.)

5 A. Yes, I have it.

6 Q. So what we've listed on Gowrisankaran Demonstrative F
7 are your estimates of harm from your appendices on each of
8 the routes, presumption routes that have been exited or
9 partially exited by at least one party. In that first row
10 there Spirit exited from LaGuardia but not from Newark. Do
11 you see that?

12 A. I see that, yes.

13 Q. And the total harm -- well, let me back up.

14 The unweighted specification, you testified earlier
15 that's your preferred specification; correct?

16 A. That's right.

17 Q. So the total for these routes under your unweighted
18 specification is \$70,941,397 of harm; correct?

19 A. Yes. That's less than 10 percent of the total net harm
20 I find.

21 Q. Are you still opining that there will be \$70.9 million
22 of harm on these routes after the merger?

23 A. No. I mean, the New York-to-San Juan route I'm happy
24 to opine that there will be harm there because they only had
25 weekly service to LaGuardia. But those others, they're not

1 going to be necessarily net harm in exactly those routes,
2 but there are going to be new routes where they've entered
3 and where there's going to be net harm.

4 Q. But you can't give an estimate for any of these
5 particular routes; correct?

6 A. Besides New York to San Juan, the biggest on this, I
7 couldn't give an estimate, no.

8 Q. But you still included this number in your total that
9 you presented to the Court; right?

10 A. Yes, I did.

11 MR. CULLEY: We could take that down.

12 Q. Separate from your analysis of the Spirit Effect, one
13 of the papers you cited in your report by Brad Shrago,
14 titled, "The Spirit Effect ultra low-cost carriers and fare
15 dispersion in the U.S. airline industry," that also
16 estimated the Spirit Effect; correct?

17 A. Yes, that's right.

18 Q. And you agree that Dr. Shrago's work is reliable?

19 A. Yeah, generally. Yeah.

20 Q. And his article is in tab J of your binder, if you want
21 to refer to it. And on page 4 in table 1 of his article --

22 MR. CULLEY: If we could put that up on screen.

23 THE COURT: Let me go back, if I could. And
24 excuse me, Mr. Culley.

25 Take a look to your demonstrative F. And did I

1 understand you correctly that you can't give a, with any
2 precision, an estimate, a reliable estimate of the harm when
3 you isolate a particular route? Did I understand that
4 correctly?

5 THE WITNESS: I wouldn't say with no precision,
6 your Honor, but I'd say it's a lot less precision than
7 overall.

8 THE COURT: Thank you. And you go ahead,
9 Mr. Culley.

10 MR. CULLEY: Of course.

11 Q. So we were just discussing Mr. Shrago's article on the
12 Spirit Effect. We're putting up page 4 in table 1. Just to
13 orient ourselves here about his definitions -- take your
14 time to get there, Doctor.

15 A. It's F, is that right? Tab F?

16 Q. Tab J.

17 A. J.

18 Q. Just let me know when you're there.

19 A. Okay, I'm there. It's page 4, you said?

20 Q. Correct.

21 A. Yeah, I'm there. Uhm-hmm.

22 Q. And so Dr. Shrago, he defines low-cost carriers to
23 include JetBlue; correct?

24 A. Yes, that's right.

25 Q. And he defines ultra low-cost carriers to include

1 Spirit; correct?

2 A. Right.

3 Q. Now, on page 20, Dr. Shrago presents his estimations of
4 the effects of different carriers' presence on the fares of
5 legacy carriers in different fare percentiles in his
6 figure 3; correct?

7 A. Yes, that's right.

8 Q. And the way we should read the bottom here of each
9 graph, the X-axis, is the deciles of fare. So the lowest
10 fare classes would be on the left, and the most expensive
11 fare classes would be on the right; correct?

12 A. Right. They're just like the regressions I did where I
13 looked at fares for cost-conscious travelers. I only put
14 10 and 90 in the demonstrative, but same idea.

15 Q. Okay. And figure 3 presents six separate charts;
16 correct?

17 A. Right.

18 Q. So to help us compare them to each other we've created
19 a demonstrative, Gowrisankaran Demonstrative G.

20 (On screen.)

21 Q. So that's in the little folder that we gave you, if you
22 want to look at that as well. Do you need another copy,
23 Doctor?

24 A. Give me one second. I think I can probably get it.

25 Yeah, I got it. Thank you.

1 Q. Okay. So on the front we've just showed the graph that
2 we were just looking at, and if you turn to the next page
3 we've overlayed Dr. Shrago's estimate of going from zero to
4 one low-cost carrier with his estimate of Spirit being
5 present on the route. Do you see that?

6 A. Yes, I do.

7 Q. Okay. And what we see here is that starting at the
8 tenth percentile, his estimate of the impact of a low-cost
9 carrier on legacy carrier fares, that's above the point
10 estimate for Spirit for all the rest of the fare classes;
11 correct?

12 A. That's right.

13 Q. And these gray bands around the point estimates, those
14 are called "confidence intervals"; right?

15 A. Yes, that's right.

16 Q. And 95 percent confidence intervals, to be precise?

17 A. Right.

18 Q. And if the 95 percent confidence intervals for these
19 overlap, it would be a rough first cut of saying that they
20 are not statistically distinguishable from one another;
21 correct?

22 A. Yes, that's right.

23 Q. And, now, you did not look at the Frontier Effect;
24 right? That's not something you estimated?

25 A. I didn't directly estimate the Frontier Effect, no, I

1 didn't. So, I mean, Frontier's in my sample because it's
2 going to be, you know -- Spirit and Frontier compete on some
3 routes, so...

4 Q. But Dr. Shrago did estimate the Frontier Effect; right?
5 We can take a look at the next page where we've overlaid his
6 estimate of Frontier with his estimate of Spirit.

7 A. Yes.

8 Q. And at every point the confidence intervals for Spirit
9 and Frontier, those are touching; correct?

10 A. Yes.

11 Q. And you did not estimate the Allegiant Effect; correct,
12 Doctor?

13 A. No, just like for Frontier.

14 Q. But Dr. Shrago did estimate the Allegiant Effect;
15 right?

16 A. Yes, he did.

17 Q. And let's take a look at the next page. And, again, at
18 every point the confidence intervals for his estimate of the
19 Allegiant Effect and his estimate of the Spirit Effect,
20 those overlap; correct?

21 A. Yes, that's right.

22 Q. Doctor, a little bit earlier you testified that your
23 net-harm model accounts for entry; is that right? Sorry,
24 we're switching topics, just to orient.

25 THE COURT: Let's stick with this for a moment.

1 MR. CULLEY: Of course.

2 THE COURT: I just want to be -- I want to see if
3 I understand this.

4 Take a look at the last page of their
5 demonstrative, and what I get from that is that because
6 there is this Spirit-Allegiant overlap, it may be accurate
7 to say that the fares will drop, but we can't tell which or
8 what -- we can't tell which airline or both airlines. Is
9 that right?

10 THE WITNESS: So, your Honor, what I would -- how
11 I would interpret this is that when either Allegiant or
12 Spirit -- and I haven't done this analysis, of course, this
13 is Dr. Shrago. But when either Spirit or Allegiant enter on
14 routes, fares drop. Now, your Honor, Allegiant enters on --
15 I haven't done an entry analysis, but I know from my work on
16 the airline industry that Allegiant enters on fundamentally
17 different routes than Spirit. So they tend to enter very
18 small airports. Like, from very small ones to very small.
19 So I don't view this as an apples-to-apples comparison at
20 all.

21 THE COURT: I see. But is my understanding of the
22 chart correct?

23 THE WITNESS: If you could repeat it, your Honor,
24 so --

25 THE COURT: My understanding of the chart is, the

1 last page of this demonstrative G shows a Spirit Effect and
2 an Allegiant Effect, and they are roughly comparable within
3 the confidence intervals. And from that, though you don't
4 think this is an apples-to-apples comparison, and I
5 appreciate that, but just trying to understand this chart, I
6 think I could infer that the fares will drop, but we can't
7 tell due to which airline's entrance or both airlines. Is
8 that right?

9 THE WITNESS: Your Honor, I would phrase the last
10 statement just slightly differently. What I would say is
11 putting aside the apples-to-oranges comparison, I would say
12 when Spirit or Allegiant are present on a market, fares
13 would drop by a similar amount, regardless of whether it's
14 Spirit or Allegiant.

15 THE COURT: Thank you. Mr. Culley, you go ahead.

16 MR. CULLEY: Okay. So we can take that down now.

17 Q. And moving to a different topic, you testified earlier
18 that your net-harm model accounts for entry; correct?

19 A. Yes. Just to be clear, I think what you mean is does
20 it account for entry or exit of rivals to Spirit after
21 Spirit enters. And in that way it does account for them.
22 For any repositioning that might occur after Spirit enters,
23 it's in there.

24 Q. And the way that it does that is because you look at
25 the effect of Spirit's entry and you say that that is --

1 that price drop is comparable to a price increase that would
2 occur if Spirit were to exit; correct? That's how your harm
3 model works?

4 A. I think there's two -- I don't quite understand your
5 question. I apologize for this. But you asked me earlier
6 about rivals, does it account for rivals' entry, I thought.
7 And what you're asking me now is about Spirit and what
8 Spirit does. So it has nothing to do with the previous
9 question?

10 Q. I'm just trying to break it down. So in your model
11 Spirit enters routes; correct?

12 A. Yes. So let me be clear. In my estimation I use
13 Spirit entry to understand the impact of Spirit, of having
14 Spirit presence on prices.

15 Q. And you say that if Spirit exits a route, the price
16 drop that occurred when it entered will be similar to the
17 price increase when it exits. That's what you're saying?

18 A. That's right. That's like the yellow arrow I testified
19 to, that we go back to the baseline level, the vertical
20 yellow arrow.

21 Q. And you are saying because you did not control for
22 rivals' entry on a route or exit on a route after Spirit
23 enters, you're saying that a rival exiting, in your data,
24 after Spirit enters, is comparable to a rival entering after
25 Spirit exits?

1 A. No, that's not quite right. But let me just explain it
2 as I would think about it as an economist. So the natural
3 experiment here is Spirit entering routes. The
4 identification assumption is that if Spirit were to exit,
5 it's going to look similar. And I did not control -- you're
6 right that I did not control for what happened to rivals
7 after. Because if rivals repositioned in response to Spirit
8 entry, they might enter more, they might exit, then that's
9 all going to be baked into it. So the variation that's a
10 natural experiment is Spirit itself entering.

11 So if the merger were to go forward I'm going to flip
12 that variation and look at Spirit exiting, and the
13 assumption is that what the rivals are going to do is
14 roughly the reverse of what the rivals did when Spirit
15 entered.

16 Q. You would agree, Doctor, that exits are not necessarily
17 motivated by the same factors as entries; correct?

18 A. They're not, but in this particular case I'm looking at
19 exits caused by the merger, and that means all Spirit routes
20 are going to exit. And that's quite similar to the
21 identification that I used here, the natural experiment of
22 Spirit entry being driven by Spirit's big growth plans over
23 the last 13 years.

24 Q. When carriers exited, in your data sample, after Spirit
25 entered, you did not go back and analyze those individual

1 entries to determine their exit was caused by Spirit's
2 entry; correct?

3 A. There was -- I apologize. There were too many entries
4 and exits flipped in that. Could you ask that again,
5 please?

6 Q. So we're talking about cases where, in your data,
7 Spirit entered and then another carrier subsequently exited.
8 Do you follow?

9 A. Yes.

10 Q. In each of those cases you did not go back and, for
11 each of those individually, verify that the carrier exited
12 in response to Spirit's entry; correct?

13 A. No, I didn't. And nor did it have to be. The point
14 is, is that my exogenous variation, my natural experiment is
15 Spirit entry. And I want to look at what happens in
16 response to that or what happens after that that's not in
17 response to that. But I don't need to control for it. It
18 might be for other factors that are completely random.

19 MR. CULLEY: And just to clear up the record a
20 bit, if we could put Gowrisankaran Demonstrative -- I'm
21 sorry. If we could put tab J back up, the Shrago -- or,
22 sorry, Gowrisankaran Demonstrative G back up. Thank you.
23 And if we could go to the page that overlaid Frontier and
24 Spirit.

25 (On screen.)

1 Q. I believe, Doctor, you gave a little bit of testimony
2 about the lines and confidence intervals overlapping for
3 Spirit and Allegiant, and that meant that the effect of
4 Spirit being present or Frontier being present were
5 comparable; correct?

6 A. If you -- again, I said that I didn't think it was an
7 apples-to-apples comparison. They're not looking at the
8 same routes. But if you were, then if two lines like this
9 are similar, then the point is, is that the effects are
10 comparable, and that's what I testified to the Court.

11 Q. The same would be true for Spirit and Frontier, because
12 those confidence intervals are overlapping, Dr. Shrago's
13 estimate of the impact of Spirit being present on a route or
14 Frontier being present on a route, those are comparable;
15 correct?

16 A. Yeah. I think your last question asked me Frontier
17 also, but it's all right. So...

18 MR. CULLEY: I pass the witness, your Honor.

19 THE COURT: Mr. Battaglia, anything further?

20 MR. TEITELBAUM: One moment, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. BATTAGLIA:

23 Q. Hello, Doctor.

24 Dr. Gowrisankaran, the Court asked you if you could
25 give a precise estimate on a single route, and you said that

1 the estimate across all routes would be more precise. Why
2 is that the case?

3 A. Well, when you look at a -- at all routes, I'm going to
4 take an average of a bunch of estimates for each route. So
5 if we look at any route there may be particular factors that
6 would affect the harm in that route or the net harm. And
7 the point of econometrics of statistics is that when you
8 look at an average, all of those estimates will average out.
9 And so you get much more precision if you look at a hundred
10 routes than if you look at one route. Because any
11 particular factor that might affect harm or net harm in one
12 route, that factor is going to be counterbalanced by a
13 different route. When you look at all 100 together you get
14 a lot more certainty about what's going to happen than
15 looking at one route in isolation.

16 Q. So why does the estimation of harm across all the
17 overlap and Spirit-only routes provide the most accurate
18 estimate of effects?

19 A. Well, what it does is it uses the most routes possible.
20 And that's the basic premise of statistics, that if you want
21 the most accurate effects, what you want to do is take the
22 most points that are there. You don't want to take just one
23 route and extrapolate from it, you want to look at all the
24 routes that are there. And then you get as close to
25 possible as getting the complete answer because you've taken

1 the average across a whole bunch of different markets, each
2 with slightly different conditions.

3 Q. Doctor, do you recall defendants' counsel asking you
4 about a national market?

5 A. Yes, I do.

6 Q. Would a national market help you understand the likely
7 competitive effects of this merger?

8 A. I --

9 MR. COHEN: Objection. Leading, your Honor.

10 THE COURT: Sustained. Don't lead the witness.

11 MR. BATTAGLIA: I apologize, your Honor.

12 Q. How would a -- Doctor, how would a national market help
13 you understand the likely competitive effects of this
14 merger?

15 MR. CULLEY: Your Honor, the question was already
16 covered in his direct examination.

17 THE COURT: No, I think not. He may have it.

18 A. It really wouldn't help me understand them at all.

19 Q. And why not, Doctor?

20 A. Because that's not how tickets are sold. So if we look
21 at how passengers buy tickets, it's on particular routes for
22 particular endpoint pairs. If you want to look at where
23 prices are set, it's on routes. That's how firms set
24 prices. That's how customers buy tickets. They don't buy
25 tickets for some national travel, they buy a ticket from one

1 origin to one destination.

2 Q. Doctor, do you recall defendants' counsel asking you
3 about the Shrago paper?

4 A. Yes, I do.

5 Q. If we could pull up demonstrative G, please.

6 MR. CULLEY: Mr. McLeod, would you put that up for
7 them?

8 (On screen.)

9 Q. Now, Doctor, why is this relevant?

10 A. To my analysis, that is?

11 Q. Yeah.

12 A. I don't think it's relevant to my analysis.

13 Q. And why not, Doctor?

14 A. Well, what this is asking is how Frontier and Spirit
15 and other airlines are going to lower legacy prices. The
16 point that Dr. Shrago makes is that these airlines lower
17 prices of legacy carriers. That's not what -- that doesn't
18 add anything to what I'm finding, which is if you remove
19 Spirit from the market prices would go up. Now, it's
20 consistent with it, but it doesn't take away from it in any
21 way.

22 Q. Doctor, do you know whether Mr. Shrago controls for
23 capacity in his analysis?

24 A. I don't --

25 MR. CULLEY: Objection, your Honor. This is not

1 in his report.

2 THE COURT: Is it?

3 MR. BATTAGLIA: It's responsive to their
4 questioning on cross.

5 THE COURT: It is, but my rule is clear.
6 Sustained.

7 Anything further for this witness?

8 MR. BATTAGLIA: Sorry, yes, more questions, your
9 Honor. I apologize.

10 THE COURT: Of course.

11 Q. Doctor, did you control for capacity in your analysis?

12 A. Yes, I did. And by controlling for capacity, I found
13 that when Spirit has bigger capacity it lowers prices more.

14 Q. Now, Doctor, defendants asked you some questions about
15 your net-harm estimates. Do you recall that?

16 A. Yes, I do.

17 Q. And I believe you mentioned a national amount of harm.
18 Can you clarify what you meant by that?

19 A. What I meant is that across the relevant markets that
20 I've identified there would be over \$900 million in harm in
21 my most conservative model. When I said national harm, what
22 I really meant is the aggregation across the relevant
23 markets that I've identified that would be the total.

24 Q. And, Doctor, earlier defendants' counsel asked you
25 about your use of critical elasticity to apply the

1 hypothetical monopolist test to a broader set of markets.

2 Do you remember that?

3 A. Yes, I do.

4 Q. And was the hypothetical monopolist test the only basis
5 for your concluding the origin and destination pairs are the
6 relevant markets to assess this acquisition?

7 A. It certainly was not.

8 Q. So what other analyses did you conduct?

9 A. I had a slide on these where I listed three sets of
10 other analyses I did. So what I looked at was I looked at
11 competitive effects to understand whether, in fact, prices
12 went down when there's entry on those markets. And that
13 spoke to there being -- this being markets -- these being
14 relevant antitrust markets. I also looked at -- at the
15 shortest routes and looked at whether other modes of
16 transportation needed to be in the market. And I found that
17 they didn't need to be in the market. And I think there was
18 a fourth reason. I don't remember what it is. I can turn
19 to my report, if you like.

20 Q. No, that's okay, Doctor.

21 Defendants' counsel asked you about aggregating markets
22 based on supply-side substitution. Do you recall that?

23 A. Yes, I do.

24 Q. And you were asked about a footnote in the horizontal
25 merger guidelines?

1 A. Yes, I do remember that.

2 Q. And so it was footnote 8, page 16, if I can refer you
3 to tab A of defendants' binder.

4 A. Uhm-hmm.

5 Q. Footnote 8 on page 16.

6 A. What page is that again?

7 Q. That would be page 16.

8 A. Sixteen.

9 Q. And in response to defense counsel's questions you
10 mentioned -- this is in the rapid entrance section?

11 A. Yes.

12 Q. Doctor, how do you understand rapid entry?

13 MR. CULLEY: Objection, your Honor. This, again,
14 is not in his report.

15 MR. BATTAGLIA: Again, it's in response to the
16 line of questioning of defense counsel.

17 THE COURT: It may be but you've exchanged these
18 reports. I have rules for a reason. I'm delighted to have
19 these guidelines. I'll be reading. Go ahead. Sustained.

20 Anything else? It's in his report.

21 MR. BATTAGLIA: Yes. Yes, your Honor.

22 THE COURT: Go ahead.

23 MR. BATTAGLIA: Could you please pull up
24 defendants' 1006 Summary 1?

25 THE COURT: Now in evidence as --

1 MR. BATTAGLIA: As 802, I believe.

2 THE COURT: Yes.

3 Q. And, Doctor, defense counsel asked you about a few
4 select nonstop presumption routes for the market share
5 change for a particular airline on these routes. Do you
6 remember that?

7 A. Yes, I do.

8 Q. And, Doctor, and you have your slides? I'd like to
9 refer you to slide 28 from your --

10 A. Yes, I -- 28. I'm sorry. There's a lot in this
11 binder. Okay. I'm there.

12 Q. So on your slide 28 do you see the San Juan-Tampa
13 market?

14 A. Yes, I do.

15 Q. And did that market remain a presumption market from Q2
16 2022 to Q2 2023?

17 A. Yes, it did.

18 THE COURT: What number is it, sir?

19 THE WITNESS: It is 41, your Honor.

20 THE COURT: Thank you.

21 Q. So, Doctor, is it surprising to you that this market
22 remained a presumption market despite entry by another
23 airline?

24 MR. CULLEY: Objection. Leading again, your
25 Honor.

1 THE COURT: Sustained.

2 What do you make of that?

3 THE WITNESS: I think, your Honor, that it's not
4 surprising to me. Spirit and JetBlue have big market shares
5 on this. And Frontier, when it enters, it typically has
6 lower frequency than Spirit or JetBlue.

7 Q. And, Doctor, earlier defendants' counsel showed you
8 some of your own exhibits for the 51 presumption nonstop
9 overlap markets with several different colors. I think
10 yellow for Spirit exits, blue for JetBlue exits, maybe
11 magenta for entry or expansion by other carriers. Do you
12 remember that?

13 A. Yes, I do.

14 MR. BATTAGLIA: Could you please bring up
15 Gowrisankaran Demonstrative A?

16 (On screen.)

17 MR. BATTAGLIA: If you could please scroll through
18 showing the different colors. Thank you.

19 (On screen.)

20 Q. Now, Doctor, with respect to recent or planned exits by
21 Spirit or JetBlue, did you look at how those exits compared
22 to recent or planned entries by Spirit or JetBlue?

23 A. Yes, I did.

24 Q. And what did you find?

25 A. I found that they're pretty similar. So I looked at

1 the last year for which we have share data, and we went from
2 51 presumptive markets to 49. I also testified that when we
3 look at the current year, for which we don't know how many
4 presumptive markets there were, there was something like, I
5 don't remember the number, but I have a slide on it, like
6 14 planned exits that would eliminate overlaps and, like,
7 nine entries that would create overlaps. I don't remember
8 the exact numbers but I testified to that on Friday, of
9 course.

10 MR. CULLEY: Your Honor, it appears we're just
11 repeating direct testimony yet again.

12 THE COURT: Maybe to you, and you can object to
13 it. So this stands. I rule on objections.

14 Q. Doctor, what do you make of the markets that were
15 highlighted in what I'll call magenta, the entry expansion
16 by other carriers?

17 A. Well --

18 MR. CULLEY: Objection, your Honor. Vague, and
19 also, again, cumulative.

20 THE COURT: It bears a striking resemblance to my
21 question. If he understands it he may answer. Of course
22 before he was cued by the leading question, which I
23 sustained. So it's easy for me to say what do you make of
24 it. Now he's trying it, we'll see what he says.

25 THE WITNESS: Thank you, your Honor.

1 THE COURT: Can you answer the question?

2 THE WITNESS: Yes, I can.

3 THE COURT: What do you make of it?

4 THE WITNESS: Well, I find those entry or
5 expansion events really not informative for a bunch of
6 reasons. So, first of all, I looked at the demonstrative
7 from Mr. Friedman and what it showed often is examples like
8 added one flight a day seasonally.

9 MR. CULLEY: Objection, your Honor, again. This
10 testimony is not in his report.

11 THE COURT: Oh, no -- well, I'm going to let him
12 answer.

13 THE WITNESS: Okay. Thank you, your Honor.

14 Yes, I saw this last night actually. And it
15 showed examples like seasonal one time, one flight a week
16 addition. These are not mostly -- and there are also a
17 bunch of exits, which defense counsel did not ask me about.
18 And so all together these were not entry events that would
19 make me substantially rethink what's happening in these
20 markets. These were mostly about repositioning. And there
21 was only one side of this being shown in the magenta lines,
22 the entry side. There were other events where I saw
23 examples of exit or of reductions in service by other
24 carriers.

25 So it really didn't affect my overall conclusions

1 that the bulk of these are nonstop presumption routes.

2 THE COURT: That's about it, isn't it,

3 Mr. Battaglia?

4 MR. BATTAGLIA: One last -- a few questions.

5 THE COURT: Go right ahead.

6 Q. And, Doctor, here the orange routes concern a
7 divestiture endpoint. Was evaluating divestitures part of
8 your assignment in this case?

9 A. No, it was Dr. Chipty's assignment and I won't say
10 anything more about that.

11 Q. Was evaluating the likelihood of ULCC entry in the
12 relevant markets part of your assignment in this case?

13 A. No, it was not. Again, it was Dr. Chipty's assignment.

14 Q. And under the horizontal merger guidelines, at what
15 step in the process of evaluating competitive effects does
16 one evaluate the likelihood of entry?

17 MR. CULLEY: Objection, your Honor. Again, this
18 is not in the report.

19 THE COURT: Sustained.

20 MR. BATTAGLIA: Nothing further, your Honor.

21 MR. CULLEY: No questions from me, your Honor.

22 THE COURT: All right. You may step down, and
23 thank you.

24 (Whereupon the witness stepped down.)

25 THE COURT: Rather than have you call your last

1 witness we'll stop now. And let me -- I've been informed,
2 and correct me if my information is wrong, here's how things
3 look. We're going to call Dr. Chipty. We expect to get
4 done with him tomorrow. If that's short of 1:00 we'll stop,
5 and that's fine. I'll charge the time to the defense, but
6 they have plenty of time.

7 I understand that the defense then will begin to
8 put on its case on Monday, the 27th. We'll sit the 27th,
9 28th, 29th and 30th. And you expect to be done by then, is
10 that right?

11 MR. SHORES: That's correct, your Honor.

12 THE COURT: Thank you. And thank you for that
13 information.

14 Now, I don't intend to sit on Friday the 1st or
15 Monday the 4th. Assuming that your -- assuming that these
16 estimates are correct, we'll have closing arguments on
17 Tuesday, the 5th of December, and we'll take the morning for
18 that. I'm not -- that's not an invitation to take the
19 morning, I will set aside the morning.

20 I follow the old state practice. The party
21 bearing the burden of proof gets to go last. The government
22 will go last, the defense will go first.

23 Let me ask a question. I'm sure it's dealt with
24 in the pretrial order but now that we're coming up to it,
25 when am I going to see your proposed findings and rulings?

1 MR. DUFFY: Your Honor, that's a very good
2 question. The CMO had those deadlines initially set for, I
3 think it was eight days after the anticipated closing date
4 but obviously that has shifted. So our preference would be
5 to have it be roughly that same amount of time after
6 closings.

7 THE COURT: And that's what you're figuring on
8 too, Mr. Shores?

9 MR. SHORES: Yeah, eight days is fine, your Honor,
10 as earlier reflected.

11 THE COURT: Right.

12 MR. DUFFY: I just had a clarification question,
13 your Honor. It's correct that Court will sit on that
14 Wednesday of next week? Is that correct? Because I think
15 the prior schedule did not have us --

16 THE COURT: Oh, it is correct. I was mistaken. I
17 cannot sit on Wednesday, the 27th of December. But the time
18 limits still work, right?

19 THE CLERK: The 29th.

20 THE COURT: The 29th of November. I'm sorry.

21 MR. SHORES: We would still expect to close our
22 case on that Thursday, your Honor.

23 THE COURT: I appreciate that. And thank you,
24 because I have to be absent that day. All right.

25 MR. SHORES: Could I ask one more clarification

1 question?

2 THE COURT: Sure.

3 MR. SHORES: In terms of time for closing
4 arguments, we would request one hour, if that's sufficient,
5 per side?

6 MR. DUFFY: That's fine with us, your Honor.

7 THE COURT: An hour per side.

8 MR. SHORES: Thank you, your Honor.

9 MR. DUFFY: Just one minor thing. We had one
10 error on the list of exhibits admitted through
11 Dr. Gowrisankaran. So I'll pass this to Ms. Gaudet, if I
12 can.

13 THE COURT: I appreciate it.

14 At present then we stand government seven days,
15 two hours, thirty-five minutes. Defense four days, two
16 hours, fifteen minutes.

17 We'll stand in recess until 9:00 a.m. tomorrow
18 morning. We'll stand in recess. And I do thank counsel.

19 THE CLERK: All rise.

20

21 (Proceedings adjourned.)

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C E R T I F I C A T E

I, Cheryl B. Palanchian, Court Reporter
for the United States District Court for the
District of Massachusetts, do hereby certify that
the foregoing pages are a true and accurate
transcription of my shorthand notes taken in the
aforementioned matter to the best of my skill and
ability.

/s/ Cheryl B. Palanchian 11/20/2023
CHERYL B. PALANCHIAN

Registered Merit Reporter
Certified Realtime Reporter